

Westlaw.

891 F.2d 286

Page 1

891 F.2d 286, 1989 WL 141715 (C.A.4 (N.C.))
(Cite as: 891 F.2d 286)

H

Ali v. Chester
C.A.4 (N.C.), 1989.

NOTICE: THIS IS AN UNPUBLISHED
OPINION. (The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA4 Rule 36 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Fourth Circuit.
Suleiman ALI, a/k/a Larry E. Wallace,
Petitioner-Appellant,

v.

David CHESTER; Attorney General of the State of
North Carolina, Respondents-Appellees.
No. 89-6516.

Submitted: Aug. 31, 1989.

Decided: Nov. 9, 1989.

Rehearing and Rehearing In Banc Denied Dec. 19,
1989.

W.D.N.C.

DISMISSED.

Appeal from the United States District Court for the
Western District of North Carolina, at Charlotte.
James B. McMillan, Senior District Judge. (C/A
88-44-C-C-M)

Gibran Tabriq Suleiman Ali, appellant pro se.
Barry Steven McNeill (Office of the Attorney
General), for appellee.

Before DONALD RUSSELL, K.K. HALL and
PHILLIPS, Circuit Judges.
PER CURIAM:

*1 Gibran Tabriq Suleiman Ali seeks to appeal the
district court's dismissal of his petition for a writ of
habeas corpus, brought pursuant to 28 U.S.C. §
2254. He asserts as grounds for relief that he was
denied the effective assistance of counsel because

his trial attorney failed (1) to investigate adequately
and present his alibi defense, (2) to present
witnesses that would have called into question the
motives of the detective investigating the case and
the impartiality of the identification procedure used
by the detective, (3) to contact a key defense
witness in a timely fashion, resulting in the witness'
inability to identify Ali at trial, and (4) coerced Ali
into agreeing not to testify at the last moment,
although the defense strategy had been for him to
testify.

Ali received a full and fair hearing of the merits of
these claims in state court. He was represented by
counsel and his presentation of evidence was not
restricted in any fashion. The state court's factual
findings resulting from that hearing are adequately
supported by the record and presumed to be correct,
Sumner v. Mata, 449 U.S. 539 (1981); 28 U.S.C. §
2254(d), and are dispositive of most of Ali's claims.

Claiming his attorney was ineffective for failing to
investigate adequately his alibi defense, Ali
contends that his attorney failed to contact and
subpoena Fred King, Many Heard, and Sandra
Holley, all of whom were critical to his defense.
However, the state court found that Ali failed to tell
his attorney about Heard and King pretrial, and
failed to tell his attorney pretrial anything about
Holley that would have suggested the need for
further investigation. These findings preclude the
conclusion that the attorney was ineffective for
failing to investigate or present these witnesses.
Similarly, the state court's findings that Ali failed to
advise his attorney pretrial of the existence of
Robert Morrow, and that there was no evidence to
support Ali's allegations concerning the substance
of Paula Brown's testimony, as she was not called to
testify at the hearing or at trial, are dispositive of
Ali's claim that his attorney was ineffective for not
challenging the impartiality of the detective
investigating the crime or the identification
procedure used by the detective. Finally, the state
court's finding that there was no evidence of duress

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

891 F.2d 286

Page 2

891 F.2d 286, 1989 WL 141715 (C.A.4 (N.C.))
(Cite as: 891 F.2d 286)

or breach of the attorney-client privilege that resulted in Ali not testifying forecloses relief on the ground that Ali's attorney coerced him into not testifying at trial.

As his final contention of ineffective assistance, Ali claims that his attorney was ineffective for failing to arrange a face-to-face meeting between Ali and an important alibi witness pretrial. The witness, who testified at trial, was unable to identify positively Ali, and thus could not fully corroborate Ali's alibi. Ali believes that had an earlier meeting between the witness and Ali been arranged, the witness' memory would have been refreshed and it is much more likely that the witness would have been able to identify Ali at trial. Although evidence on this claim was presented at the state hearing, it appears that the state court did not make any factual findings relating to this issue. Nevertheless, the claim still must fail because Ali offers nothing to support his conjecture that the witness would have been more likely to remember Ali had a meeting been arranged between the time Ali claims to have first told his attorney about the witness and trial.^{FN*}

*2 Accordingly, we deny a certificate of probable cause and dismiss Ali's appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the material before the Court and argument would not aid the decisional process.

DISMISSED.

FN* Similarly, we find that Sandra Holley's arrest records would have contributed little, if anything, to the testimony presented on Ali's behalf at trial and that the performance of Ali's attorney cannot be deemed unreasonable because he failed to introduce these records.

C.A.4 (N.C.), 1989.

Ali v. Chester

891 F.2d 286, 1989 WL 141715 (C.A.4 (N.C.))

END OF DOCUMENT

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.